

## Message Text

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ACTION DLOS-06

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ACDA-07 AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

CIEP-01 COME-00 DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05

FMC-01 TRSE-00 H-02 INR-07 INT-05 IO-13 JUSE-00 L-03

NSAE-00 NSC-05 NSF-01 OES-06 OMB-01 PA-01 PM-04

PRS-01 SP-02 SS-15 USIA-06 SAL-01 FEA-01 /158 W

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FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 1492

INFO USUN NEW YORK 2236

C O N F I D E N T I A L TOKYO 12051

E.O. 11652: GDS

TAGS: EFIS, PLOS, JA

SUBJECT: US-JAPAN FISHERY NEGOTIATIONS: AUGUST 10 "NIHON KEIZAI" REPORT

THAT GOJ WILL RECOGNIZE 200-MILE JURISDICTION AS CUSTOMARY  
INTERNATIONAL LAW

BEGIN LOU: BEGIN SUMMARY: SOME GOJ OFFICIALS MAY HAVE LAUNCHED A  
TRIAL BALLOON IN AUGUST 10 PAGE ONE "NIHON KEIZAI" ARTICLE  
WHICH QUOTED GOVERNMENT SOURCES AS STATING THAT AT FORTH-  
COMING US-JAPAN FISHERY NEGOTIATIONS GOJ WILL RECOGNIZE  
200-MILE FISHERY ZONE AS CUSTOMARY INTERNATIONAL LAW.  
EMBASSY CONTACTS IN FONOFF AND FISHERY AGENCY STATED THAT  
GOJ HAS NOT MADE A DECISION ON THIS QUESTION, BUT DID NOT  
DENY THAT IT WAS UNDER CONSIDERATION. END SUMMARY.

1. PARA 2. BELOW IS FULL TRANSLATION OF AUGUST  
10 "NIHON KEIZAI" PAGE ONE ARTICLE HEADLINED "GOVERNMENT TO  
RECOGNIZE 200 NAUTICAL MILES AS CUSTOMARY I TERNATIONAL  
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LAW FOR JAPAN-US FISHERIES NEGOTIATIONS". EMBASSY'S

SOURCES IN FONOFF (OKUBO, DEP. DIR., SECOND NORTH AMERICAN DIV., KOIKE, ACTING HEAD, LOS OFFICE, AND OWADA, DIR., TREATIES DIV.) AND FISHERIES AGENCY (MATSUURA, DIR., OCEAN FISHERIES DEPT.) SAID STORY WAS INCORRECT, BUT DID NOT DENY THAT QUESTION BEING DISCUSSED. THEY DID DENY THAT GOJ HAS REACHED DECISION TO RECOGNIZE LEGALITY OF 200-MILE ZONE IN ABSENCE OF LOS TREATY. GOJ OFFICIALS EXPRESSED PUZZLEMENT CONCERNING IDENTITY OF "GOVERNMENT SOURCE" QUOTED AND, EXCEPT FOR MATSUURA, WERE TIGHT-LIPPED IN THEIR RESPONSES. MATSUURA NOTED THAT THE REPORTER WAS OBVIOUSLY WELL-INFORMED AND SUGGESTED THAT POSSIBLY HE WAS ELABORATING AND CHARACTERIZING AS A "POLICY CHANGE" A POSITION WHICH GOJ HAD EXPLAINED TO US AT JUNE 2-3 WASHINGTON TALKS--THAT JAPAN WOULD AT SOME POINT BE PREPARED TO RECOGNIZE 200-MILE FISHERY JURISDICTION AS CUSTOMARY INTERNATIONAL LAW EVEN IF LAW OF THE SEA SHOULD FAIL TO REACH A CONCLUSION. GOJ, MATSUURA CONTINUED, IS STILL CONSIDERING WHAT ITS CRITERIA SHOULD BE FOR ACCEPTING A SERIES OF UNILATERAL 200-MILE DECLARATIONS AS HAVING ESTABLISHED A CUSTOMARY INTERNATIONAL LAW. THE REPORTER'S LIST OF KEY COUNTRIES WHOSE ATTITUDES WOULD BE TAKEN INTO ACCOUNT, HE ACKNOWLEDGED, WAS A GOOD CLUE TO THE GOJ'S LINE OF THINKING. KOIKE AGREED THAT IF GOJ WERE ABLE TO RECOGNIZE 200-MILE JURISDICTION AS CUSTOMARY INTERNATIONAL LAW, IT MIGHT HELP IN SOME OF THE EXPECTED DIFFICULTIES WITH THE DIET. MATSUURA STRESSED, HOWEVER, THAT THE DIET WILL HAVE TO RATIFY AGREEMENT WITH THE U.S. BECAUSE NO CLEAR TRENDS HAVE YET EMERGED CONCERNING THE SPECIFIC CONTENT OF 200-MILE CLAIMS. EMBASSY COMMENT: WE SUSPECT THAT THE "NIHON KEIZAI" ARTICLE MAY BE A TRIAL BALLOON, PERHAPS LAUNCHED BY THE FISHERY AGENCY WHICH IS CLEARLY INTERESTED IN EXPANDING THE GOJ'S LEGAL OPTIONS. END COMMENT. END LOU.

2. BEGIN UNCLASSIFIED: BEGIN TEXT: ACCORDING TO WHAT WAS REVEALED BY A GOVERNMENT SOURCE ON THE 9TH, THE JAPANESE GOVERNMENT FIRMED UP A POLICY TO RECOGNIZE 200-NAUTICAL-CONFIDENTIAL

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MILE ECONOMIC WATERS AS CUSTOMARY INTERNATIONAL LAW AT THE JAPAN-US FISHERIES NEGOTIATIONS WHICH WILL START ON THE 18TH. AS TO 200-NAUTICAL-MILE ECONOMIC WATERS, THE GOVERNMENT HAS HITHERTO TAKEN THE POSITION THAT IT WILL NOT RECOGNIZE SUCH WATERS BEFORE THE LAW OF THE SEA IS REALIZED AT THE UN LAW OF THE SEA CONFERENCE AND THAT, ACCORDINGLY, IT WILL NOT RECOGNIZE THE UNITED STATES' UNILATERAL 200-

NAUTICAL-MILE ACT BEFORE THAT TIME. SO LONG AS THE GOVERNMENT TAKES THIS POSITION, IT CANNOT SIT AT THE NEGOTIATION TABLE COMMON TO JAPAN AND THE UNITED STATES, UNLESS A SUDDEN AGREEMENT IS REACHED ON THE LAW OF THE SEA AT THE LAW OF THE SEA CONFERENCE WHICH IS NOW UNDER WAY IN NEW YORK. THE GOVERNMENT HAS BEEN RACKING ITS BRAINS AS TO COUNTERMEASURES.

THIS POLICY CHANGE SHOWS THAT THE GOVERNMENT WILL RECOGNIZE 200-NAUTICAL-MILE ECONOMIC WATERS AS CUSTOMARY INTERNATIONAL LAW AND WILL, THEREBY, AUTOMATICALLY RECOGNIZE THE UNILATERAL 200-NAUTICAL-MILE ACT OF THE UNITED STATES. THIS IS BECAUSE IF THE GOVERNMENT IS BOUND BY THE POLICY NOT TO RECOGNIZE 200-NAUTICAL-MILE ECONOMIC WATERS BEFORE REALIZATION OF LAW OF THE SEA, IT CANNOT ENTER INTO SUBSTANTIAL NEGOTIATIONS IN JAPAN-US FISHERIES NEGOTIATIONS AND BECAUSE THERE HAS APPEARED THE DANGER THAT, IN THE WORST CASE, JAPANESE FISHING BOATS WILL BE COMPLETELY SHUT OUT OF THE 200-NAUTICAL-MILE ZONES FROM THE COAST OF THE UNITED STATES SIMULTANEOUSLY WITH THE ENFORCEMENT OF THE 200-NAUTICAL-MILE ACT OF THE UNITED STATES NEXT MARCH.

AT THE JAPAN-US NEGOTIATIONS THIS TIME, CO-ORDINATION OF JAPANESE AND US POSITIONS, WHICH ARE CONFRONTED WITH EACH OTHER CENTERING ON THE US 200-NAUTICAL-MILE ACT, IS REGARDED AS AN IMMEDIATE FOCAL POINT. THE UNITED STATES, IN THE "FISHERIES CONSERVATION AND MANAGEMENT ACT" WHICH DECIDED ON 200-NAUTICAL-MILE EXCLUSIVE FISHING ZONES, SAID THAT BILATERAL FISHERIES AGREEMENTS MUST RECOGNIZE EXCLUSIVE FISHING CONTROL RIGHTS WHICH ARE STIPULATED IN THE ACT. AGAINST THIS, CONFIDENTIAL

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OUT COUNTRY HAS HITHERTO TAKEN THE POSITION THAT IT CANNOT RECOGNIZE US EXERCISE OF THE RIGHTS UNDER THE 200-NAUTICAL-MILE ACT BEFORE REALIZATION OF LAW OF THE SEA.

WITH THE POLICY CHANGE THAT OUR COUNTRY "WILL NOT BE PARTICULAR ABOUT REALIZATION OF LAW OF THE SEA ALONE," THERE WILL BE OPENED UP A WAY TO A JAPAN-US COMPROMISE. WHEN TO RECOGNIZE 200-NAUTICAL-MILE ECONOMIC WATERS AS CUSTOMARY INTERNATIONAL LAW HAS BECOME A BIG TASK. AT PRESENT, THE NATIONS WHICH HAVE DECIDED ON 200-NAUTICAL-MILE ECONOMIC WATERS BY LAWS ARE THE UNITED STATES, CANADA, MEXICO, IRELAND, AND THE SOUTH AMERICAN COUNTRIES. THE FRENCH PARLIAMENT HAS ALREADY GIVEN THE GOVERNMENT THE AUTHORITY TO CARRY OUT 200-NAUTICAL-MILE ECONOMIC WATERS AT ANY TIME.

THUS THE KEY TO WHETHER OR NOT JAPAN RECOGNIZES (200-MILE JURISDICTION) AS CUSTOMARY INTERNATIONAL LAW IS THE ATTITUDE OF SUCH COUNTRIES AS THE USSR, SOUTH KOREA, U.K., POLAND AND AUSTRALIA.

HOWEVER, EVEN IF JAPAN ACCEPTS THE US 200-MILE LAW, THE NEGOTIATIONS WILL PROBABLY BE DIFFICULT BECAUSE OF THE LAW'S PROVISIONS FOR EXCLUSIVE US FISHERIES JURISDICTION. IN PARTICULAR, US COURT JURISDICTION OVER VESSELS WHICH VIOLATE THE LAW AND ISSUANCE OF US REGISTRATION PERMITS TO VESSELS DESIRING TO FISH ARE POINTS WHICH WILL BE A PROBLEM. UNDER CURRENT DOMESTIC LAW, INTERNATIONAL AGREEMENTS WHICH AFFECT THE RIGHTS AND DUTIES OF CITIZENS MUST BE BASED ON GOVERNMENT OR GOVERNMENT TREATIES. THUS, UNLESS THE US MAKES MAJOR CONCESSIONS, PROSPECTS ARE THAT IT WILL BE DIFFICULT TO CONTINUE THE US-JAPAN FISHERY AGREEMENT IN THE FORM OF A REVISION OF THE PRESENT ADMINISTRATIVE AGREEMENT. END TEXT. END UNCLASSIFIED. SHOESMITH

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